

RECEIVED

JUL 3 1996

FCC MAIL ROOM

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of

Implementation of Section 302 of
the Telecommunications Act of 1996

)
) DOCKET FILE COPY ORIGINAL

)
) CS Docket No. 96-46
)
)

**COMMENTS IN OPPOSITION TO CERTAIN PORTIONS OF FCC SECOND REPORT
AND ORDER REGARDING OPEN VIDEO SYSTEMS (OVS) AND REQUEST FOR
CLARIFICATION OF OTHER PORTIONS OF THE ORDER**

The Village of Schaumburg, Illinois, a governmental cable television Local Franchising Authority ("LFA"), has reviewed the Second Report and Order regarding Open Video Systems (OVS) and has several comments that should be considered by the Commission.

1. Paragraph 29 of the *Order* states that, prior to the FCC certifying an OVS operator, it is "permissible, but not necessary" for that OVS operator to obtain the consent of local authorities to use rights-of-way and obtain the approval of local authorities regarding public, educational, and governmental (PEG) requirements. The Village of Schaumburg believes that this process is fundamentally flawed. There may be cases that arise where OVS operators are not able to gain approval for local authorities regarding use of rights-of-way or PEG requirements. The FCC certification would create a substantial conflict in these instances as OVS operators would not have the ability to offer services.

It would be more appropriate for local approvals to be obtained before (or as a condition of) FCC certification as an OVS operator. The approval of local authorities should be required before any FCC certification is granted.

2. The Village of Schaumburg believes that the control of local rights-of-way is a function of local governments and local franchising authorities (LFAs). The FCC should not take any action to pre-empt any "non-discriminatory and competitively neutral" requirements. The Village concurs with the FCC's reasoning in Paragraph 210 that allows local authorities to establish standards for "ensuring public safety in the use of rights-of-way by gas, telephone, electric, cable, and similar companies." The Village also encourages the FCC to clarify that "similar companies" includes OVS operators as defined by the *Order*.

3. The Village supports the provisions of the *Order* that require local cable operators with a Title VI franchise to continue to meet the obligations of that franchise even if the operator decides

0214

to convert the cable system to an OVS system in compliance with FCC rules. Paragraph 12 states that a cable operator can become an OVS operator only if it is subject to "effective competition." The Village strongly supports this decision. Paragraph 12 also states that the decision to allow a cable operator to become an OVS provider "shall not be construed to affect the terms of any existing franchising agreements or other contractual agreements." The Village also strongly supports this decision to require cable operators to continue to meet their contractual obligations.

4. The *Order* does not establish a process for allowing a local franchising authority to require an OVS operator to remove its facilities from the rights-of-way. However, based on the Commission's reasoning that local authorities have complete control over local rights-of-way, it appears that an OVS operator can be forced to remove its facilities subject to local regulations and ordinances. Additionally, the *Order* does not outline mechanisms for local governments to impose and enforce terms and conditions on the use of rights-of-ways. The Village of Schaumburg requests that the Commission modify its *Order* to require OVS operators to make contractual agreements with local authorities pertaining to access to, and use of, rights-of-ways.

5. Paragraph 218 of the *Order* references Section 653 (c)(2)(b) of the Telecommunications Act of 1996 which makes OVS operators subject to fees based on gross revenue. The Act stated that the fee "shall not exceed the rate at which franchise fees are imposed on any cable operator." These fees are based on the gross revenues received for the operation of the entire cable system. However, Paragraph 220 of the *Order* states that "revenues collected by unaffiliated video programming providers" will not be subject to the fee on gross revenues. The Village of Schaumburg urges the Commission to reconsider this portion of its ruling. Gross revenues should include all revenues derived from the operation of the open video system, regardless of the organization that receives them.

By allowing the revenues of unaffiliated operators to be excluded from calculations, the Commission is reducing the base for the fees. This may lead to a reduction in the amount of fees collected by local authorities. This allows OVS operators to pay a lesser fee for use of rights-of-ways than cable operators.

6. The Village of Schaumburg is also concerned about the provisions of the *Order* that may allow cable operators to forego the cable franchise renewal process and become OVS operators. The Commission allows cable operators to become OVS operators provided that they are subject to effective competition and continue to meet the obligations of their franchise agreement. However, the *Order* does not require cable operators to meet updated obligations as determined by community ascertainment studies that are conducted by local authorities. The Village of Schaumburg requests that the Commission require cable operators to satisfy provisions that are justified through community ascertainment proceedings.

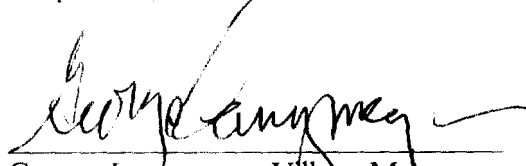
7. The *Order* allows local exchange carriers (LECs) and long distance companies to continue to use rights-of-ways under the terms and conditions of outdated franchise agreements. The Commission's *Order* would allow the LECs to offer video programming and other new services (via

open video systems) without requiring renegotiation of the existing franchise. The Village of Schaumburg opposes this assertion and feels that it will undermine the authorities of local governments. All users of rights-of-way should be required to negotiate new franchises that modify or update existing agreements. These modifications are justified based on changes to federal, state, or local laws; changes in technology; changes in service offerings; and restrictions on right-of-way capacity. Current users of local rights-of-way must be required to meet new conditions regarding the continued use of rights-of-ways. To allow the same regulations to remain in place for indefinite periods of time is not practical

For the foregoing reasons, the Village of Schaumburg, Illinois strongly urges the Commission to reconsider specific portions of its *Order* and clarify other portions of the *Order*.

Executed this 2nd day of July, 1996 at Schaumburg, Illinois.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "George Longmeyer", is written over a horizontal line.

George Longmeyer, Village Manager
Village of Schaumburg
101 Schaumburg Court
Schaumburg, IL 60193-1899
Phone (847) 895-4500